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Re Gun Soon Thin

HIGH COURT (JOHOR BAHRU) — ORIGINATING MOTION NO 25–34–1996
ABDUL MALIK ISHAK J
1 JANUARY 1997

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Evidence *— Presumption — Death — Elements to be proved — Evidence Act 1950 s 108*

Evidence *— Judicial notice — Notorious knowledge — Japanese occupation of Malaya — Whether sufficient notoriety should be attached to the fact that the Japanese occupation had taken the death toll on the higher scale — Evidence Act 1950 s 57*

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The applicant sought a declaration that his father ('Gan Teck Heow'), who had not been heard of for more than seven years by those who would naturally have heard of him if he had been alive, be presumed dead. There was an affidavit evidence that when the Japanese invaded

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Malaya in 1942, Gan Teck Heow was nabbed by the Japanese soldiers. Efforts to trace Gan Teck Heow, though mounted extensively, proved futile. Evidence showed that Gan Teck Heow had never contacted his family members since the Japanese soldiers took him away. The issue before the court was whether, on the facts of the

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case, Gan Teck Heow ought to be presumed dead.

Held, granting the order:

(1) It was for the applicant to prove circumstances of facts which the court should accept as prima facie evidence that Gan Teck Heow

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be presumed dead. There is no presumption of law as to continuance of life. Each case must be determined on its own facts (see p 355B–C); *Doe d Knight v Nepean* (1833) 5 B & Ad 86, *Nepean v Doe d Knight* (1837) 2 M & W 894 and *R v Harborne (Inhabitants)* (1835) 2 Ad & El 540 followed.

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(2) Where no statute applies, there is no 'magic' in the mere fact of a period of seven years elapsing without there being positive evidence of a person being alive. The issue whether a person is, or is not, to be presumed dead, as generally speaking, is one of fact and not subject to a presumption of law. It is a matter of taking the facts as a whole and balancing the respective probabilities of life

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continuing and having ceased. Mere lapse of time without anything more is of no effect at all (see p 356B, G–H); *Re Watkins* [1953] 2 All ER 1113, *Bradshaw v Bradshaw* [1955] 3 WLR 965 and *Doe d France v Andrews* (1850) 15 QB 756 followed.

(3) If a person is not heard of for seven years, there is a presumption

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of the fact of death at the expiration of seven years, but the exact time of death is not a matter of presumption but of evidence and the onus of proving that death took place at any particular time within the seven years lies upon the person who claimed a right to the establishment of which that fact is essential. There is no

presumption at all that death took place at the close of seven years. It is the duty of the court to draw an inference from the facts as to the time of death (see pp 358H–I and 359B).

(4) Based on the facts of the case and the affidavit evidence, the court held that Gan Teck Heow be presumed dead.

Further, the court could take judicial notice of the fact that the Japanese occupation had taken the death toll on the higher scale. Section 57 of the Evidence Act 1950 enumerates those matters of which the court must take judicial notice. It was important to note that the matters enumerated therein were not exhaustive in nature. What was of utmost importance was to see whether sufficient notoriety attached to the fact involved so as to make it proper for the court to assume its existence without proof. Sufficient notoriety could certainly be attached to the Japanese invasion of Malaya and the brutalities meted out during the Japanese occupation (see pp 360D and 359E, I); *Pembangunan Maha Murni Sdn Bhd v Jururus Ladang Sdn Bhd* [1986] 2 MLJ 30 followed.

[Bahasa Malaysia summary

Pemohon meminta perisytiharan bahawa ayahnya ('Gan Teck Heow'), yang tiada apa-apa khabar telah didengar mengenainya selama lebih daripada tujuh tahun oleh orang-orang yang sepatutnya mendengar khabarnya jika dia masih hidup, dianggap sudah meninggal dunia. Terdapat keterangan afidavit bahawa apabila Jepun menyerang Malaya dalam tahun 1942, Gan Teck Heow ditangkap oleh askar-askar Jepun. Percubaan untuk mengesan Gan Teck Heow gagal memberikan apa-apa hasil walaupun dijalankan secara meluas. Keterangan menunjukkan bahawa Gan Teck Heow tidak pernah menghubungi ahli keluarganya sejak dibawa pergi oleh askar-askar Jepun. Isu di hadapan mahkamah adalah sama ada, atas fakta-fakta kes, Gan Teck Heow patut dianggap telah meninggal dunia.

Diputuskan, membenarkan perintah:

(1) Ia merupakan tanggungjawab pemohon untuk membuktikan keadaan fakta-fakta yang mana mahkamah harus terima sebagai keterangan prima facie bahawa Gan Teck Heow dianggap telah meninggal dunia. Tiada anggapan undang-undang tentang kehidupan berterusan. Setiap kes mesti ditentukan atas fakta-faktanya sendiri (lihat ms 355B–C); *Doe d Knight v Nepean* (1833) 5 B & Ad 86, *Nepean v Doe d Knight* (1837) 2 M & W 894 dan *R v Harborne (Inhabitants)* (1835) 2 Ad & El 540 diikut.

(2) Di mana tiada statut terpakai, tiada 'kuasa ajaib' dalam fakta semata-mata tempoh tujuh tahun meluput tanpa adanya keterangan positif seseorang masih hidup. Isu sama ada seseorang patut atau tidak patut dianggap mati adalah, pada umumnya, isu fakta dan tidak tertakluk kepada anggapan undang-undang. Ia adalah perkara mengambil fakta-fakta secara keseluruhan dan

menimbangkan kebarangkalian masing-masing tentang riwayat kehidupan berterusan dan tamat. Peluputan masa semata-mata tanpa apa-apa lebih daripada itu langsung tidak memberikan sebarang kesan (lihat ms 356B, G–H); *Re Watkins* [1953] 2 All ER 1113, *Bradshaw v Bradshaw* [1955] 3 WLR 965 dan *Doe d France v Andrews* (1850) 15 QB 756 diikut.

(3) Jika tiada apa-apa khabar telah didengar mengenai seseorang selama tujuh tahun, terdapat anggapan fakta kematian apabila tamatnya tujuh tahun, tetapi masa kematian yang tepat bukanlah perkara anggapan tapi keterangan dan beban membukti kematian itu berlaku pada bila-bila masa tertentu dalam tempoh tujuh tahun terletak pada orang yang menuntut hak kepada kewujudan fakta itu yang mana fakta itu adalah perlu. Tiada anggapan sama sekali bahawa kematian berlaku di hujung tujuh tahun. Ia merupakan kewajipan mahkamah untuk membuat inferens daripada fakta-fakta tentang masa kematian (lihat ms 358H–I dan 359B).

(4) Berdasarkan fakta-fakta kes dan keterangan afidavit, mahkamah memutuskan bahawa Gan Teck Heow dianggap sudah meninggal dunia.

Seterusnya, mahkamah boleh mengambil notis kehakiman fakta bahawa pendudukan Jepun telah meningkatkan jumlah kematian. Seksyen 57 Akta Keterangan 1950 menyebut satu per satu perkara-perkara yang mana mahkamah mesti mengambil notis kehakiman. Adalah penting untuk mengingati bahawa perkara-perkara yang disebut satu per satu di dalamnya bukanlah lengkap. Apa yang paling penting adalah untuk melihat sama ada fakta yang terlibat adalah cukup terkenal supaya ia adalah wajar untuk mahkamah menganggap kewujudannya tanpa bukti. Serangan Malaya oleh Jepun dan kekejaman yang berlaku semasa pendudukan Jepun sudah tentu merupakan sesuatu yang cukup terkenal (lihat ms 360D dan 359E, I); *Pembangunan Maha Murni Sdn Bhd v Jururus Ladang Sdn Bhd* [1986] 2 MLJ 30 diikut.]

Notes

For cases on presumption of death, see 7 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 1292–1295.

For cases on judicial notice, see 7 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 1159–1176.

Cases referred to

Badal v Saraswati 103 IC 329 (refd)

Balakrishnan s/o Kunjamboo Nair v Savastine Anthony s/o Francis [1991] 1 CLJ 503 (refd)

Bradshaw v Bradshaw [1955] 3 WLR 965 (folld)

Chia Kay Heng & Anor v Chia Kim Siah & Anor [1989] 1 MLJ 272 (refd)

Chipchase v Chipchase [1939] 3 All ER 895 (refd)

Dennis v AJ White & Co [1916] 2 KB 1 (refd)
Doe d France v Andrews (1850) 15 QB 756 (folld)
Doe d Knight v Nepean (1833) 5 B & Ad 86 (folld)
Nepean v Doe d Knight (1837) 2 M & W 894 (folld)
Ivett v Ivett (1930) 143 LT 680 (refd)
Lee Lip Ngee v Crown Counsel [1947] MLJ 68 (refd)
Lim Kong v PP [1962] MLJ 195 (refd)
MacDarmaid v A-G [1950] 1 All ER 497 (refd)
Pang Ah Chee v Chong Kwee Sang [1985] 1 MLJ 153 (refd)
Pembangunan Maha Murni Sdn Bhd v Jururus Ladang Sdn Bhd [1986] 2 MLJ 30 (folld)
Prudential Assurance Co v Edmund Edmonds (1876–77) 2 App Cas 487 (refd)
PP v Choo Teck Heng [1960] MLJ 218 (refd)
Punjab v Nathu AIR 1931 L 582 (refd)
R Muthu Thambi v K Janagi [1955] MLJ 47 (refd)
R v Harborne (Inhabitants) (1835) 2 Ad & El 540 (folld)
R v Lumley (1869) LR 1 CCR 196 (refd)
Ram Tarak v Selgrant [1944] AC 153 (refd)
Tractors Malaysia Bhd v Kumpulan Pembinaan Malaysia Sdn Bhd [1979] 1 MLJ 129 (refd)
Watkins, Re [1953] 2 All ER 1113 (folld)
Yong Pak Yong v PP [1959] MLJ 176 (refd)

Legislation referred to

Evidence Act 1950 ss 57, 108

Gan Techiong (*Gan & Lim*) for the applicant.

Abdul Malik Ishak J: The applicant, Gun Soon Thin, seeks a declaration that his father by the name of Gan Teck Heow, who has not been heard of for seven years by those who would naturally have heard of him if he had been alive, be presumed dead. There was evidence that Guan Pak @ Gan Pak, who had since died, was the father of Gan Teck Heow. Guan Pak @ Gan Pak also had another son by the name of Guan Teck Chee who died on 25 May 1970 at the age of 61. A piece of land measuring 8 acres 0 rood 34 poles in Geran Mukim 455, Lot 2932 at Mukim Sungai Pinggan, Daerah Pontian, Negeri Johor is registered in the name of Gan Teck Heow as 'representative'. It is this land that the applicant is interested in together with the beneficiaries of Guan Pak @ Gan Pak. It is this land that is the subject matter of the probate action for the purpose of extracting the letters of administration ('the LA'). Without the death certificate of Gan Teck Heow or a declaration to that effect by this court, the LA can never be extracted. Hence, the present application.

Section 108 of the Evidence Act 1950 enacts as follows:

> When the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

A There is an affidavit evidence that when the Japanese invaded Malaya in 1942, Gan Teck Heow was nabbed by the Japanese soldiers at Parit Marjunit, Benut, Johor. Efforts to trace Gan Teck Heow, though mounted extensively, proved futile. It seems that Gan Teck Heow had never contacted his family members since the Japanese soldiers took him away.

B It is for the applicant to prove circumstances of facts which this court should accept as prima facie evidence that Gan Teck Heow be presumed dead. There is no presumption of law as to continuance of life, but it is a correct approach to adopt that each case must be determined on its own facts. This is the view of Lord Denman CJ in *Doe d Knight v Nepean* (1833) 5 B & Ad 86; 22 Digest 165 at p 1412 and in *Nepean v Doe d Knight* (1837) C 2 M & W 894; 7 LJ (Ex) 335, 22 Digest 165 at p 1412. Again, Lord Denman CJ in *R v Harborne (Inhabitants)* (1835) 2 Ad & El 540; 4 LJ MC 49; 111 ER 209; 22 Digest 164 at p 1399 said:

> D I must take this opportunity of saying that nothing can be more absurd than the notion that there is to be any rigid presumption of law on such questions of fact, without reference to accompanying circumstances, such, for instance, as the age or health of the party. There can be no such strict presumption of law. In *Doe d Knight v Nepean* (1833) 5 B & Ad 86; 22 Digest 165 at p 1412, the question arose much as in *R v Twyning, Gloucestershire (Inhabitants)* (1819) 2 B & Ald 386; 15 Digest 740 at p 7992. The claimant was not barred, if the party was presumed not dead till the expiration of the E seven years from the last intelligence. The learned judge who tried the cause held that there was a legal presumption of life until that time, and directed a verdict for the plaintiff, because, if there was a legal presumption, there was nothing to be submitted to the jury. But this court held that no legal presumption existed, and set the verdict aside. That is quite consistent with the view which we take in the present case; and *R v Twyning, Gloucestershire* F *(Inhabitants)* (1819) 2 B & Ald 386; 15 Digest 740 at p 7992 may be explained in the same way. I am aware that in this latter case, Bayley J found his decision on the ground of contrary presumptions, but I think that the only questions in such cases are, what evidence is admissible, and what inference may fairly be drawn from it. It may be said, suppose a party were shewn to be alive within a few hours of the second marriage, is there no G presumption then?

It is interesting to note that *Phipson* (9th Ed) at p 702 held the view that the words 'presumption of continuance of life' to be one of fact, while *Taylor on Evidence* (12th Ed) at para196 onwards treats it as a presumption of law. For my part, between these two views, I have no hesitation to hold H that the former is the correct statement of the law. Lush J in *R v Lumley* (1869) LR 1 CCR 196; 38 LJ MC 86; 20 LT 454; 33 JP 597; 15 Digest 739 at p 7990 delivered the judgment of the court (comprising Kelly CB, Byles, Lush and Brett JJ and Cleasby B) and he held, inter alia, in these words (38 LJ MC at p 88):

I The existence of the party at an antecedent period may or may not afford a reasonable inference that he was living at the subsequent date ... Thus, the question is entirely for the jury. The law makes no presumption either way.

In the same vein, Hodson J had this to say in *MacDarmaid v A-G* [1950] 1 All ER 497 especially at p 499:

> There is no presumption of law as to continuance of life, but each case must be determined on its own facts. A

Turning now to the question as to presumption of death, I need to say that I agree with what Harman J said in *Re Watkins* [1953] 2 All ER 1113 at p 1115 to the effect that where no statute applies, there is no 'magic' in the mere fact of a period of seven years elapsing without there being positive B evidence of a person being alive. It is, in my judgment, a matter of taking the facts as a whole and balancing, as a jury would, the respective probabilities of life continuing and having ceased. In *Bradshaw v Bradshaw* [1955] 3 WLR 965, the Divisional Court comprising Lord Merriman P and Collingwood J, declined on the facts to accede to the plea of a wife that her first husband be presumed dead in 1940, even though, on the one C hand, she had not heard from him for some 19 years, but, on the other hand, she had made no inquiries during that period. In *Ivett v Ivett* (1930) 143 LT 680; 94 JP 237; 22 Digest (Repl) 162 at p 1477, both Hill and Bateson JJ, were not prepared to assume death after the lapse of some seven years when there were facts which could account for the husband D not being heard of. In *Chipchase v Chipchase* [1939] 3 All ER 895, where a lapse of 12 years was being discussed, Henn Collins J had this to say at p 901:

> As soon as it was established ... that the former husband ... had not been heard of for seven years, then undoubtedly there was evidence for their E consideration that he was dead, and it was more than evidence because it was a presumption and conclusive evidence until it was rebutted by evidence which showed, in fact, that he was alive.

Lord Blackburn in *Prudential Assurance Co v Edmund Edmonds* (1876–77) 2 App Cas 487 especially at p 509 had this to say:

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> ... in order to raise a presumption that a man is dead from his not having been heard of for seven years, you must inquire amongst those who, if he was alive, would be likely to hear of him, and see whether or not there has been such an absence of hearing of him as would raise the presumption that he was dead.

Mr Gan Techiong, learned counsel for the applicant, rightly submitted G that in matters where no statute lays down an applicable rule, the issue whether a person is, or is not, to be presumed dead, generally speaking, is one of fact and not subject to a presumption of law. The case of *Doe d France v Andrews* (1850) 15 QB 756; 117 ER 644 lays down the proposition that mere lapse of time without anything more is of no effect at all. That H case was an ejectment action in a case of a lease for three lives, two of the *cestui que vies* being dead and the third being someone about whom nothing whatever was known. The headnote to that case states briefly that:

> No witness was called who had ever known the third; and, except the mention of him in the lease (which described him as aged ten years), there I was no proof that he had ever existed. No evidence of search for him was given. Held that, to raise the presumption of his death, there should have been evidence that he had not been heard of by those persons who would naturally have heard of him had he been alive, or that search had been ineffectually made to find such a person; and that the mere fact that no witness called had heard of him was not sufficient.

A Patteson J in *Doe d France v Andrews* (supra) at p 760 sums up the case as follows:

> The mere lapse of time does not raise a presumption of death, unless you go further and show that the person has been absent, and not heard of by those who would have heard of him if he had returned.

B So far, I have set out the English position according to the cases decided by the English judges. Back home in Malaysia, there is s 108 of the Evidence Act 1950 which provides that if it is proved that a person has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to C the person who affirms it. In *R Muthu Thambi v K Janagi* [1955] MLJ 47, an argument was advanced on behalf of the respondent that as her first husband had not been heard of by her for a period of over seven years, he must be presumed to be dead after the expiration of the period of seven years. Spenser Wilkinson J had this to say at pp 48 and 49:

D > The undisputed facts were that in 1929, the wife married a man whose photograph she identified in court; she lived with this man for two years, after which he was imprisoned for one month for misappropriation of money; and after coming out of prison, the wife's father gave him some money with which he absconded to India. The wife has not heard from him since.

E > Then it is alleged that in 1940, the respondent went through a ceremony of marriage with the appellant in Bagan Serai. This is disputed by the appellant, but the learned magistrate found as a fact that the ceremony of marriage took place, and I see no reason to interfere with his finding on this point.

F > In para 7 of his grounds of judgment the learned magistrate says:
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> > 'The court is satisfied also that a marriage did take place between the complainant and the respondent in 1940; and consequently that the complainant is the respondent's wife.'
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> It appears to me that the learned magistrate has here becomes confused between a ceremony of marriage and a valid marriage. From the mere fact G that a ceremony of marriage was gone through, it does not necessarily follow that the respondent is the appellant's wife. Once it appeared, as it did in this case, that the respondent had been legally married to some other man, then, unless it could be proved either that the first marriage had been legally dissolved or that the first husband was dead at the time when she purported to marry the appellant, prima facie, the respondent was not the H appellant's wife.
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> It was contended on behalf of the respondent that because the first husband had not been heard of by the wife for a period of over seven years that he must be presumed after the expiration of the period of seven years to be dead. I cannot accept this contention.

I > In the first place, although where a person has not been heard of for a term of not less than seven years, there may be a presumption that he is dead, the onus of proving the death of that person at any particular date must rest with the person to whose case that fact is essential. This proposition was laid down by the Privy Council in the case of *Lai Chand Marwari v Mahant Ramrup Gir* 42 TLR 159. In the course of the judgment in that case Lord Blanesburgh said:

> 'But the law really is that on the facts now assumed there is no presumption as to Bhawan Gir being dead either in 1902 or 1904. There is only one presumption, and that is that when these suits were instituted in 1916, Bhawan Gir was no longer alive. There is no presumption at all as to when he died. That, like any other fact, is a matter of proof. And their Lordships would here observe that it strikes them as not a little remarkable that the theory on this point, on which the plaintiff's pleader hazards his whole case, is still so widely held, although it has so often been shown to be mistaken ... Now upon this question there is, their Lordships are satisfied, no difference between the law of India as declared in the Evidence Act and the law of England and, searching for an explanation of this very persistent heresy, their Lordships find it in the words in which the rule both in India and in England is usually expressed.'

His Lordship then quoted a passage from *Re Phene's Trusts* (1870) 5 Ch D 139:

> 'Probably the true rule would be less liable to be missed and would itself be stated more accurately, if instead of speaking of a person who had not been heard of for seven years, it described the period of disappearance as one "of not less than seven years".'

From this authority, I think it is clear that no presumption arose as to when the first husband died, but there might have been a presumption that at the date when these maintenance proceedings were commenced, the husband was no longer alive, if it had been proved that he had not been heard of by those people who were likely to have heard from him had he been alive. Even this presumption, however, does not necessarily arise from the mere fact that the respondent had not heard from her former husband. There is no doubt that in the circumstances laid down in s 108 of the Evidence Ordinance, the court may presume death, but it does not follow that in every case it will do so. If the circumstances of a man's disappearance are such that it is unlikely that his relatives would have heard from him in any event, then the court will not presume his death (see *Watson v England* (1844) 60 ER 266, *Bowden v Henderson* (1854) 65 ER 437). It appears to me that in circumstances in which the respondent's first husband left this country, it is unlikely that he would have communicated either with his wife or her father. To paraphrase the judgment of the Vice Chancellor in *Watson v England* (1844) 60 ER 266, it is reasonable to presume that all along he has been concealing himself and that he never intended to return home. The mere fact of his not having been heard of since affords no inference of his death; for in the circumstances of the case it is very probable that he would never be heard of again by his relatives.

It is a correct statement of the law to say that if a person is not heard of for seven years, there is a presumption of the fact of death at the expiration of seven years, but the exact time of death is not a matter of presumption but of evidence and the onus of proving that death took place at any particular time within the seven years lies upon the person who claims a right to the establishment of which that fact is essential. There is no presumption at all that death took place at the close of seven years. The manner in which death is proved is stated by Chan Sek Keong J in *Chia Kay Heng & Anor v Chia Kim Siah & Anor* [1989] 1 MLJ 272 at p 275 in these words:

> As to the first ground, it must surely be correct that as a matter of evidence and in the absence of other admissible evidence to the contrary, a death

A certificate or certified extract thereof is primary evidence of the death of the person named therein. A grant of representation to his estate is at best secondary evidence of the death of the person for whose estate the grant is made.

The case of *Punjab v Nathu* AIR 1931 Lah 582 lays down the principle B that when a person is not heard of for a period of seven years, there is a presumption of his death. It is the duty of the court to draw an inference from the facts as to the time of death of a person who has not been heard of for a long time (*Badal v Saraswati* 103 IC 329).

Now, the crucial question to pose would be this: were there inquiries C made to ascertain the whereabouts of Gan Teck Heow? There was affidavit evidence that after Gan Teck Heow was held captive by the Japanese during the Japanese occupation in 1942, the concerned relatives made frantic searches to locate him but to no avail. It was deposed that during the Second World War, thousands died at the hands of the Japanese and all these happened some 51 years ago. It was deposed that if Gan Teck D Heow were still alive, he would be almost 95 years of age. Who else could have heard of Gan Teck Heow if not for those who would naturally have heard of him if he was still alive? Nothing was heard of Gan Teck Heow after 1942. That was a long time ago. I can take judicial notice of the fact that the Japanese occupation had taken the death toll on the higher scale. E Section 57 of the Evidence Act 1950 enumerates those matters of which the court must take judicial notice but it is important to note that the matters enumerated therein are not exhaustive in nature. Thus, in *Pembangunan Maha Murni Sdn Bhd v Jururus Ladang Sdn Bhd* [1986] 2 MLJ 30 (SC), Syed Agil Barakbah SCJ (as he then was) had this to say (at pp 31–32):

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> In so far as judicial notice is concerned, the provision of s 57(1) makes it mandatory for the court to take judicial notice of all laws and regulations having the force of the law, public Acts passed by Parliament, the course of Parliamentary proceedings and other matters that are enumerated in sub-s (1)(a) to (o) of the section. The list, however, is not exhaustive since it is impossible to make a G really complete list although a long list of facts which the English courts take judicial notice has been prepared. The important point to note is that s 57 does not prohibit the courts from taking notice of other facts not mentioned therein. The matters which the court will take judicial notice must be the subject of common and general knowledge and its existence or operation is accepted by the public without qualification or contention. The test is that the facts involved H must be so sufficiently notorious that it becomes proper to assume its existence without proof ... . Judicial knowledge is continually extended to keep pace with the advance of art, science and general knowledge.

What is of utmost importance is to see whether sufficient notoriety attaches to the fact involved so as to make it proper for the court to assume its existence without proof. Sufficient notoriety can certainly be attached to I the Japanese invasion of Malaya and the brutalities meted out during the Japanese occupation. Judges have in the past took judicial notice of the following matters: (a) the navigation of a port in the context of communication (*Lee Lip Ngee v Crown Counsel* [1947] MLJ 68 at p 70); (b) fresh elephant droppings and the prevalence of wild boar on the road (*Lim Kong v PP*

[1962] MLJ 195 at p 197); (c) that the streets in London are crowded and dangerous (*Dennis v AJ White & Co* [1916] 2 KB 1 at p 6); (d) the world-wide economic depression at one time (*Ram Tarak v Selgrant* [1944] AC 153); (e) the activities and the prevalence of secret societies in Ipoh (*Yong Pak Yong v PP* [1959] MLJ 176 at p 177); (f) that Mountbatten Road in Singapore is a major road (*PP v Choo Teck Heng* [1960] MLJ 218 at p 219); (g) that under-capitalized contractors would resort to hire purchase agreements so as to acquire the use of costly vehicles (*Tractors Malaysia Bhd v Kumpulan Pembinaan Malaysia Sdn Bhd* [1979] 1 MLJ 129 at p 131); (h) that Chinese funeral expenses are normally incurred (*Pang Ah Chee v Chong Kwee Sang* [1985] 1 MLJ 153 at p 156 (FC)); and (i) that the average earnings of marble grinding contract workers to be RM700 per month (*Balakrishnan s/o Kunjamboo Nair v Savastine Anthony s/o Francis* [1991] 1 CLJ 503 at p 506). I am constrained to hold and I so hold that our citizens were shanghaied, brutalized and killed during the Japanese occupation of Malaya; sadly, Gan Teck Heow was one of the many that disappeared from the face of the earth.

For the reasons adumbrated above, I ruled that Gan Teck Heow be presumed dead and the orders sought for in encl 4 were granted forthwith.

Order accordingly.

Reported by Jafisah Jaafar